

COASTAL CONSERVANCY

Staff Recommendation
May 27, 2004

PACIFIC SHORES PHASE 2 FEASIBILITY STUDY

File No. 04-031
Project Manager: Karyn Gear

RECOMMENDED ACTION: Authorization to disburse up to \$353,400 to the Smith River Alliance, Inc. to undertake a second phase of feasibility analysis and pre-acquisition planning activities at the Pacific Shores subdivision, Del Norte County.

LOCATION: Pacific Shores subdivision, adjacent to the Lake Earl wetland complex, approximately seven miles north of Crescent City, Del Norte County (Exhibit 1)

PROGRAM CATEGORY: Resource Enhancement

EXHIBITS

Exhibit 1: Location Maps

Exhibit 2: Letters of Support

RESOLUTION AND FINDINGS:

Staff recommends that the State Coastal Conservancy adopt the following Resolution pursuant to Sections 31000 *et seq.* of the Public Resources Code:

“The State Coastal Conservancy hereby authorizes the disbursement of an amount not to exceed three hundred fifty-three thousand four hundred dollars (\$353,400) to the Smith River Alliance, Inc. to determine the feasibility of public acquisition of parcels in the Pacific Shores Subdivision, Del Norte County, and for initial property acquisition activities. Prior to the disbursement of funds, the grantee shall submit for the review and approval of the Executive Officer of the Conservancy a work program, schedule and budget, and the names and qualifications of any contractors to be used in the development of the project.”

Staff further recommends that the Conservancy adopt the following findings:

“Based on the accompanying staff report and attached exhibits, the State Coastal Conservancy hereby finds that:

1. The proposed project is consistent with Public Resources Code Sections 31251 *et seq.* and 31111.

2. The proposed project is consistent with the Project Selection Criteria and Guidelines adopted by the Conservancy on January 24, 2001.
 3. The Smith River Alliance, Inc. is a nonprofit organization existing under Section 501(c)(3) of the U.S. Internal Revenue Code, and whose purposes are consistent with Division 21 of the Public Resources Code.”
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PROJECT SUMMARY:

The proposed authorization would enable the Smith River Alliance (SRA), a nonprofit organization, to initiate a second phase of acquisition feasibility analysis and pre-acquisition activities related to the Pacific Shores subdivision in Del Norte County. Pacific Shores is a 1,535-lot subdivision located on the shores of Lakes Earl and Tolowa in Del Norte County. Consisting largely of sensitive dune and wetland habitat, the land was subdivided in the 1960s into approximately ½-acre lots, sold to individual lot owners, and approximately 27 miles of subdivision roads were constructed. However, because of the sensitive habitat, natural hazards, water quality concerns, and difficulty in siting development and infrastructure such as sewage and water systems, the Coastal Commission has not certified the subdivision, and it remains a “white hole” in the certified Del Norte County Local Coastal Plan, with no developed lots. Over 200 of the lots are currently in County tax-default.

Lake Earl has been identified as a State acquisition priority since 1975 by the Department of Fish and Game, and, beginning in 1977, a series of public acquisitions began to preserve and protect sensitive habitat land. However, due to the complexity of negotiating with over 1,000 individual lot owners and continuing controversy over development proposals, the Pacific Shores lots remain largely in private ownership. The Conservancy supported the first phase of SRA’s acquisition and feasibility analysis in an effort to help resolve the long-standing controversy related to development of Pacific Shores, and provide an alternative for landowners. The Conservancy’s June 2003 funding authorization enabled SRA to begin contacting landowners within the subdivision, to prepare standardized transaction documents and maps, and to undertake initial pre-acquisition activities. The Wildlife Conservation Board (WCB), at its November 2003 meeting, allocated \$3 million towards the acquisition of Pacific Shores lots from willing sellers. As of mid-April, 2004, SRA had contact with approximately 350 Pacific Shores landowners; 135 lots are in escrow and/or have been acquired; seven landowners have declined to sell, ten landowners have agreed to sell but have not yet returned their documents, and the remaining 208 require further contact. It is anticipated that an additional 330 lots could be prepared for public purchase as a result of this proposed authorization, and acquired by the WCB with funds remaining in their November 2003 allocation. In addition, the WCB is working with the County of Del Norte to acquire the 210 lots that are currently in tax default. Thus, if continued at the same rate, it is anticipated that by November 2005, up to 675 lots could be purchased.

SRA was incorporated in 1980, and its mission is to provide for the long-term protection, restoration, and stewardship of natural resources within the Smith River watershed. The Pacific Shores subdivision and Lake Earl lie within the coastal floodplain of the Smith River.

Site Description: Pacific Shores is a 1,535-lot subdivision, undeveloped save for the roads that were constructed subsequent to the subdivision in the 1960s. The subdivision lies adjacent to Lakes Earl and Tolowa, approximately seven miles north of Crescent City in Del Norte County,

and lies in the Smith River plain. Though called “lakes,” the Lake Earl/Tolowa complex is actually an estuarine lagoon, fed by heavy winter rains, several creeks in the coastal plain, and extensive groundwater sources, and is periodically open to the ocean. This 5,500-acre wetland complex was identified as one of California’s 19 most productive wetlands. Approximately 5,000 acres of adjacent sensitive habitat and recreational lands are protected through the Department of Fish and Game’s Lake Earl Wildlife Area, and the California Department of Parks and Recreation’s (DPR’s) Tolowa Dunes State Park. To the south of Tolowa Dunes lies the Point St. George property, acquired in 2002 by the County of Del Norte with funding from the Coastal Conservancy, WCB, and DPR.

The Lake Earl wetland complex provides habitat for at least 15 federally listed, California Species of Special Concern, or rare and endemic species, including bald eagle, peregrine falcon, brown pelican, western snowy plover, marbled murrelet, sand dune phacelia, Oregon silverspot butterfly, seaside hoary elfin and greenish blue butterflies, tidewater goby, green sturgeon, coho salmon, steelhead, and coast cutthroat trout. The California Species of Special Concern list includes 40 bird species found at Lake Earl. In addition to the listed species, over 300 bird species have been recorded at Lake Earl, 21 species of fish, and at least 50 species of mammals. The wetland complex hosts as many as 100,000 birds during seasonal migrations.

Project History: At its June 6, 2003 meeting, the Conservancy authorized the disbursement of \$150,000 to SRA to undertake an acquisition feasibility analysis and pre-acquisition activities for lots within the Pacific Shores Subdivision. Pursuant to that authorization, SRA completed a number of tasks including:

- Developed a list of property owners, and addresses, and create a map of the ownerships, including identification of tax-default lots
- Contacted landowners in order of lot prioritization and assessed level of interest
- Developed a standard acquisition process and undertook “due diligence” activities
- Drafted model purchase documents, escrow instructions, deeds, and other closing documents
- Negotiated with interested sellers
- Prepared transactions for consideration by WCB

At its November 2003 meeting, the WCB authorized disbursement of up to \$3,000,000 for the acquisition of lots from willing sellers within the Pacific Shores subdivision. As a part of that process, the WCB sent a letter to every lot owner at Pacific Shores, alerting them to the board item, and advising them to contact SRA if they had any interest in selling their lot. SRA received over 300 e-mails and phone calls in a 15-business-day period from property owners expressing interest. As of April 27, 2003 as a result of the feasibility study and the efforts of SRA, 36 lots have been acquired by the WCB, and a further 99 are currently in escrow.

Lake Earl and the surrounding lands have long been subject to a variety of contentious debates over preferred lake levels and development potential of lakeside properties. Most noteworthy amongst these has been the debate over development potential at the Pacific Shores Subdivision. In the 1980s, the Pacific Shores Water District was created, with the goal of advancing development of the subdivision. The water district assesses each lot owner annually, and has used those funds to undertake various environmental and development studies, but to date has been unable to advance any development in the subdivision.

Conflicting land use objectives at Pacific Shores and other areas around the lagoon have led to debates over lagoon level management that continue to this day. Ongoing debate over lagoon water level management prompted the Conservancy to help develop and enter into the Lake Earl Inter-agency Cooperative Agreement related to the area in May 1996. The agreement included the Conservancy, DFG, the Department of Water Resources, the State Lands Commission, the Office of Emergency Services, the U.S. Environmental Protection Agency, the U.S. Fish and Wildlife Service, the U.S. Army Corps of Engineers, the National Marine Fisheries Commission, and the County of Del Norte. The agreement identified the respective roles of the participants, acknowledged the resource values of the area and the conflicts associated with lake level management, and established a clear procedural protocol for managing lake levels and protecting the areas resources.

The agreement specifically states that the participants will seek to coordinate resources, including potential funding, to achieve maximum environmental and programmatic benefits in accordance with the agreement, and work cooperatively to identify and prioritize opportunities to protect, enhance, and restore wetlands and other important habitats in the Lake Earl area within the framework of the agreement. However, this agreement was written to expire in May 2001, necessitating action on the part of the concerned agencies to diminish future debate over lake levels.

In order to provide DFG with enhanced management opportunities, and to reduce friction over the management of the lagoon at DFG's preferred levels, WCB has sought to purchase fee or conservation easement interests in key parcels surrounding the lake, particularly along the eastern shore. In so doing, WCB hopes to eliminate competing land use objectives, and enhance DFG's ability to manage the area in and around Lake Earl for the best habitat enhancement and protection. The Conservancy approved the Lake Earl Conceptual Area Protection Plan in June 2002 and authorized the disbursement of \$1,000,000 to WCB to acquire properties along the eastern shore of Lake Earl. WCB is proceeding with those acquisitions. In June 2003, the Conservancy provided a grant to Smith River Alliance to initiate the Pacific Shores Feasibility Study and undertake pre-acquisition activities. The proposed authorization would continue that effort.

There is still interest by some landowners, and the Pacific Shores Water District, in developing sites at Pacific Shores. The significant environmental constraints that have stymied development remain, but it is possible that a smaller, consolidated development will be proposed on a portion of the property.

PROJECT FINANCING:

Coastal Conservancy	<u>\$353,400</u>
Total Project Cost	\$353,400

The expected source of funding is Proposition 12 funds specifically allocated for projects north of the Gualala River that benefit fish and wildlife. It is anticipated that acquisitions of lots from willing sellers identified through this project will be undertaken by the WCB, with its own funding sources. WCB has allocated up to \$3,000,000 for the acquisition of lots from willing sellers.

CONSISTENCY WITH CONSERVANCY'S ENABLING LEGISLATION:

The proposed project is consistent with Chapter 6 (Sections 31251 *et seq.*) of Division 21 of the Public Resources Code, relating to the enhancement of coastal resources; and with Section 31111.

Section 31111 authorizes the Conservancy to award grants to nonprofit organizations to undertake plans and feasibility studies. The proposed authorization would enable the Smith River Alliance, Inc., a nonprofit organization, to undertake a second phase of a feasibility study of acquiring lots from willing sellers in the Pacific Shores subdivision. The Smith River Alliance is an appropriate partner for this project in that they have among their principal purposes restoration of the Smith River and its watershed.

Pursuant to § 31251, the Conservancy may award grants to nonprofit organizations for the purpose of enhancement of coastal resources that because of improper location of improvements, natural or human induced events or incompatible land uses have suffered loss of natural and scenic values. Grants under this chapter are to be utilized for the assembly of parcels of land within coastal resource enhancement areas to improve resource management. The proposed project is consistent with this section in that it would lead to improved resource management, and help to resolve long-term conflicts between proposed development and management of the Lake Earl wetland ecosystem. Section 31252 requires that all areas proposed for resource enhancement by a nonprofit organization be identified in a certified local coastal plan as requiring public action to resolve existing or potential resource protection problems. The Pacific Shores subdivision is a “white hole” in the Del Norte County Local Coastal Plan. However, the LCP contains policies identifying wetlands and coastal dunes as sensitive habitat that should be protected.

Section 31253 authorizes the Conservancy to provide up to the total cost of any coastal resource enhancement project. The proposed feasibility study and preacquisition activities would be funded solely by the Conservancy. However, it is anticipated that WCB would acquire the lots identified through this process with its own funds, already allocated for Pacific Shores lots.

CONSISTENCY WITH CONSERVANCY'S STRATEGIC PLAN GOALS(S) & OBJECTIVE(S):

The proposed project is consistent with **Goal 8**, “Provide non-regulatory alternatives to reduce nine conflicts among competing uses in the coastal zone” **Objective A** “...work toward elimination of “white holes”...” – areas in which there is no certified Local Coastal Program under the California Coastal Act. The project is also consistent with **Goal 5** “Protect restore and enhance biological diversity in coastal areas” **Objective A** “Preserve, restore and enhance 11,500 acres of coastal habitats including coastal wetlands...dunes....”

CONSISTENCY WITH CONSERVANCY'S PROJECT SELECTION CRITERIA & GUIDELINES:

The proposed project is consistent with the Conservancy's Project Selection Criteria and Guidelines adopted January 24, 2001, in the following respects:

Required Criteria

1. **Promotion of the Conservancy's statutory programs and purposes:** See the "Consistency with Conservancy's Enabling Legislation" section above.
2. **Consistency with purposes of the funding source:** See the "Project Financing" section above.

3. **Support from the Public:** This project is supported by local legislators and elected officials, the Wildlife Conservation Board, the Department of Fish and Game, and others. Letters of support are included in Exhibit 2.
4. **Location:** Pacific Shores is located within the coastal zone of Del Norte County.
5. **Need:** The proposed project is a critical step in resolving the Pacific Shores controversy. WCB has funding available for acquisition of properties adjacent to Lake Earl, but the daunting task of negotiating with over 1,000 individual landowners has stalled public acquisition. The proposed project will provide the necessary concentrated effort to bring resolution to this complex problem.
6. **Greater-Than-Local Interest:** Lake Earl is a natural resource of State significance, and has been identified as a priority by DFG and the Pacific Coast Joint Venture.

Additional Criteria

7. **Urgency:** The controversy over the Pacific Shores subdivision has existed for nearly four decades, but there is now a window of opportunity to provide an alternative for lot owners. Funding is available for lot acquisitions; County supervisors support the program; and SRA is willing to take on the difficult task of developing the acquisition projects.
8. **Resolution of more than one issue:** The proposed project will lead to the resolution of conflicts over inappropriate development in a highly scenic natural resource area, preservation of endangered species, and improvement of natural resources management.
9. **Leverage:** See the "Project Financing" section above.
10. **Conflict resolution:** As discussed in the "Project History" section above, the Pacific Shores subdivision has been the subject of controversy for decades. The subdivision is a "white hole" in the Coastal Commission-approved Del Norte County Local Coastal Plan, and, until now, there has been no agreement on how to proceed with resolving the inherent conflicts between protecting the sensitive habitat at Lake Earl, and developing houses on residential parcels. The proposed project will provide an alternative for landowners who wish to sell their parcels.
12. **Readiness:** SRA is prepared to proceed immediately with the project.
13. **Realization of prior Conservancy goals:** See the "Project History" section above.
15. **Cooperation:** The proposed project is a cooperative effort of the Coastal Conservancy, Wildlife Conservation Board, and the Smith River Alliance to resolve a long-standing controversy and protect sensitive habitat.

CONSISTENCY WITH LOCAL COASTAL PROGRAM POLICIES:

The Pacific Shores Subdivision is identified as an "Area of Deferred Certification" in the County of Del Norte's Local Coastal Plan (LCP), certified by the Coastal Commission on October 12, 1983. The Coastal Commission's January 2000 LCP Annual Report notes that the unresolved issues are: natural hazards, water quality, environmentally sensitive habitat areas, public works and location of new development.

The proposed project is consistent with the following specific policy of the Del Norte County LCP:

Coastal sand dunes . . . should be maintained in their existing states or returned to their natural states where feasible to ensure their values as groundwater recharge regions and wildlife habitats. [p. 70]

As a general policy, the County of Del Norte “. . . recognizes the economic and biologic significance of maintaining and where possible enhancing marine resources, coastal waters and sensitive coastal habitats.” General policies designed to achieve these important goals include, but are not limited to: 1) Maintain, and where feasible enhance the existing quality of all marine and water resources; 2) Encourage programs (*e.g.*, habitat rehabilitation) designed to improve the quality of coastal fisheries and other marine resources; 3) Maintain all surface and subsurface waters at the highest level of quality to ensure the safety of public health and the biological productivity of coastal waters; 4) Avoid the impairment of water quality or adversely effect the biological productivity of coastal waters from agricultural waste; and 5) Protect environmentally sensitive habitat areas against any significant disruption of habitat values. [LCP VI(C) *et seq.*]

The LCP further acknowledges that Lake Earl and Tolowa, and their immediate marshlands, are “. . . recognized as major locations of excellent wildlife habitat, native or natural vegetation and of aesthetic value. These areas should be protected from adverse activity. No further commitment to development should be allowed except that which is in the best interest of the public health, safety and welfare. . . .” [LCP, Marine and Water Resources, VI(B)(4)(c)]

COMPLIANCE WITH CEQA:

The proposed project is statutorily exempt from the provisions of the California Environmental Quality Act (CEQA) under § 15262 in that it involves only planning and feasibility studies for potential future activities. Staff will file a notice of exemption upon approval.